

(d) *Subsequent action.* (1) If either the MRP or MSPB sustains an employee's appeal based on a finding that the employee did not commit an MRO, the Department is not precluded from subsequently proposing an adverse action (other than an MRO) based on the same record evidence. Such a proposal must be issued—

(i) In accordance with applicable law and regulation, including the procedures set forth in § 9701.609; and

(ii) Normally within 15 days after the date of MSPB's decision, unless the Department establishes good cause for exceeding this time limit.

(2) Nothing in this section precludes the Department from taking a subsequent action against an employee based, in part, on additional evidence that was not part of the record in the initial proceeding before the MRP.

(e) *Judicial review.* Except as otherwise provided by 5 U.S.C. 7702 with respect to cases involving allegations of discrimination, judicial review of any final MSPB order or decision on an MRO is as prescribed under 5 U.S.C. 7703.

(f) *OPM intervention.* (1) The Director may, as a matter of right at any time in the proceeding before the MRP or MSPB, intervene or otherwise participate in any proceeding under this section in any case in which the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

(2) Except as provided in § 9701.709, any decision under paragraph (c) of this section is final unless the Director petitions MSPB for review within 30 days after receipt of the decision. The Director may petition MSPB for review only if he or she believes the decision is erroneous and will have a substantial impact on a civil service law, rule, regulation, or policy directive. MSPB, for good cause shown, may extend the filing period.

(g) *Appeal rights of retirees.* If an employee has been removed under subpart F of this part, neither the employee's status under any retirement system established by Federal statute nor any election made by the employee under any such system will affect the employee's appeal rights.

#### § 9701.708 Mandatory Removal Panel.

(a) *Composition.* (1) The Mandatory Review Panel is a standing panel composed of three members who will be appointed by the Secretary for terms of 3 years, except that the appointments of the initial MRP members will be for terms of 2, 3, and 4 years, respectively. The Secretary may extend the term of any member beyond 3 years when necessary to provide for an orderly transition and/or appoint the member for an additional term.

(2) Members of the MRP must be independent, distinguished citizens of the United States who are well known for their integrity and impartiality. Members must have expertise in either labor or employee relations or law enforcement/homeland security matters. At least one member of the Board must have experience in labor relations. Members may be removed by the Secretary on the same grounds as an MSPB member.

(3) An individual chosen to fill a vacancy on the MRP will be appointed for the unexpired term of the member who is replaced.

(b) *Appointment of the Chair.* The Secretary, at his or her sole and exclusive discretion, will appoint one member to serve as Chair of the MRP.

(c) *Appointment procedures for non-Chair MRP members.* (1) The appointments of the two non-Chair MRP members will be made by the Secretary after he or she considers any lists of nominees submitted by labor organizations that represent employees in the Department of Homeland Security.

(2) The submission of lists of recommended nominees by labor organizations must be in accordance with timelines and requirements set forth by the Secretary, who may provide for additional consultation in order to obtain further information about a recommended nominee. The ability of the Secretary to appoint MRP members may not be delayed or otherwise affected by the failure of any labor organization to provide a list of nominees that meets the timeframe and requirements established by the Secretary.